

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

IN RE: . Case No. 08-35653(KRH)
. .
. .
CIRCUIT CITY STORES . 701 East Broad Street
INC., . Richmond, VA 23219
. .
Debtor. . March 30, 2009
. . 11:06 a.m.
.

TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN R. HUENNEKENS
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor:

McGuireWoods LLP
By: DOUGLAS FOLEY, ESQ.
9000 World Trade Center
101 W. Main St.
Norfolk, VA 23510

McGuireWoods LLP
By: SARAH B. BOEHM, ESQ.
One James Center
901 East Cary Street
Richmond, VA 23219

Skadden Arps Slate Meagher & Flom LLP
By: GREGG M. GALARDI, ESQ.
One Rodney Sq.
Wilmington, DE 19899

Proceedings recorded by electronic sound recording, transcript
produced by transcription service

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@optonline.net

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES (CONT'D):

For the Official
Committee of Unsecured
Creditors:

Tavenner & Beran, PLC
By: PAULA BERAN, ESQ.
20 North Eighth Street
Second Floor
Richmond, VA 23219

By: ROBERT FEINSTEIN, ESQ.

For Various Landlords:

Christian & Barton, LLP
By: AUGUSTUS C. EPPS, JR., ESQ.
909 East Main Street
Suite 1200
Richmond, VA 23219

For Lexar Media:

Law Office of Valerie Morrison
Suite 6200
7925 Jones Branch Drive
McLean, VA 22102

For TSA Stores:

NEIL GOLDMAN, ESQ.

For TJ Maxx:

Sands Anderson
By: LISA TAYLOR HUDSON, ESQ.
801 East Main Street
Suite 1800
Richmond, VA 23219

For the Joint Venture:

Wachtell, Lipton, Rosen & Katz
By: JOSHUA A. FELTMAN, ESQ.
51 West 52nd Street
New York, NY 10019

For Various Landlords:

Williams Mullen
By: WILLIAM SCHWARZCHILD, ESQ.
1021 East Cary Street
Richmond, VA 23218

1 THE CLERK: In the matter of Circuit City Stores,
2 Incorporated. Case Number 08-35653. Hearing on Items one
3 through 41 as set out on debtors' amended agenda.

4 MR. FOLEY: Good morning, Your Honor. Doug Foley
5 with McGuireWoods on behalf of the debtors. Your Honor, with
6 me at counsel table is Sarah Boehm with McGuireWoods as well as
7 Gregg Galardi from Skadden Arps. With us in court today is
8 Michelle Mosier, who's the CFO of the company

9 THE COURT: All right.

10 MR. FOLEY: Your Honor, if Your Honor is okay with
11 the procedure, we would like to take a matter out of order. We
12 appreciate the Court granting our expedited hearing to set the
13 motion to approve the settlement agreement with the Great
14 American Joint Venture. There are representatives from the
15 liquidators here today as well as some other people who've
16 traveled out of town and need to catch some flights. We were
17 hoping to try to do that matter first and take it out of order.
18 There are a couple preliminary matters associated with it that
19 Your Honor has not ruled on yet. One is obviously the motion
20 to shorten the notice period to have it heard today and the
21 other, and that's Item Number 38 on the docket. Item Number 39
22 is also the motion to seal the actual letter agreement.

23 I have spoken to Mr. VanArsdale, who's not here
24 today, he had a personal appointment out of the office this
25 morning, but he advised me yesterday that I could advise the

1 Court that he does, notwithstanding his admonishment of me and
2 my firm proliferating motions to seal things, and we talked
3 through this one and he understood the rationale for it and
4 advised that I could represent to the Court that the Office of
5 the U.S. Trustee does not have an objection to Item Number 39,
6 which is our motion to seal with respect to the joint venture
7 settlement motion.

8 So if Your Honor would -- if those two items, Items
9 Number 38 and 39 could be granted, Mr. Galardi would address
10 the Court with respect to Item Number 40.

11 THE COURT: All right. Does any party wish to be
12 heard in connection with the Debtors' motion to shorten the
13 notice period and limiting notice of debtors' motion?

14 (No audible response)

15 THE COURT: Okay, Item Number 38 then will be
16 granted. And the Court has reviewed your motion to file the
17 documents under seal and the Court will approve that one as
18 well.

19 MR. FOLEY: Thank you, Your Honor.

20 MR. GALARDI: Good morning, Your Honor. For the
21 record, Gregg Galardi of Skadden Arps on behalf of the debtors.
22 Your Honor, the motion before Your Honor is to do a
23 confidential settlement with the joint venture of Great
24 American S.B. Capital and certain other liquidators. Your
25 Honor is aware of the number that we have filed under seal.

1 Just to briefly give Your Honor some background. In the
2 courtroom today is Mr. Kevin Regan who has also been proffered
3 for other settlements of the firm of FTI. In addition, Mr.
4 Feltman of Wachtell Lipton is in, as well as Mr. Raskin, who
5 represents the joint venture.

6 Your Honor, I think our papers said it, but I think
7 it's important, and if called as a witness, Mr. Regan would
8 testify that essentially, the agreement that we had provided
9 had two components to it. One is a fee-based component and one
10 was an FF&E component. Your Honor, there was no dispute with
11 respect to the FF&E component, and so it really went to the fee
12 component.

13 Your Honor, going through the fee component, Your
14 Honor heard a little bit about this with Hilco, but obviously
15 this agreement has much more significance, because there was
16 approximately \$1.1 billion of inventory to be sold through the
17 sales. Your Honor may recall that there were two schedules in
18 the agency agreement, one where there had to be an inventory
19 threshold and another where we have what's called a cost
20 factor. The cost factor schedule is the one that was of
21 concern with respect to the settlement, although the threshold
22 issues obviously aren't affected here.

23 Your Honor, as the company proceeded, both with
24 respect to the first auction and with respect to the second
25 auction, the company was giving out a cost file, and as Your

1 Honor may know, during the course of leading up to the filing
2 of the bankruptcy, the company had gone to a new advertising
3 scheme called the one price policy. With that there are many,
4 and it is a very large company and was a very large company,
5 there were many price files. We thought we had come up to a
6 single price file and given the liquidators the correct price
7 file. But unfortunately, certain of those price file
8 information and cost information was not accurate as to the
9 actual amounts and the discounts that have been taken. That
10 therefore has an effect, Your Honor on what we call the
11 schedule, called the cost factor schedule, and indeed, Mr.
12 Regan would testify as would Mr. Raskin, the one thing that
13 both parties agree is that when you come to bid on the pricing
14 of a deal, and in particular, the guaranteed amount of the
15 deal, the one thing that is most important -- there's two
16 things really most important -- but one is the cost factor
17 which shows the current discount so that you can do a cadence
18 for store closings.

19 And then the second is how much inventory there,
20 because they base their model on how long they would have to do
21 these sales, what the expenses would be and therefore, what
22 they can guarantee. And as Your Honor may recall, there was a
23 guaranteed amount here.

24 As a result of the cost file error, which the company
25 has investigated, there was a potential for the cost factor

1 scheduled to actually drop off the schedule below even the
2 schedule number. As a result, as soon as, as the sale started
3 to proceed, much to the joint venture's credit, Your Honor,
4 within, I think, probably the first seven days of the sale
5 process, the joint venture advised us that there was -- they
6 had noticed a problem and that they had done a price check.

7 We had at that point, both through FTI and through my
8 firm, one, alerted to the Committee about the potential
9 problem, and two, began to discuss a resolution of that
10 potential problem with the joint venture. I will say the joint
11 venture shared with us immediately what their expectations for
12 the sale was. But we were caught into the dilemma of whether
13 you discontinue the sale, bring up certain legal actions, such
14 as reformation, mutual mistake and all of those matters, but at
15 that point it would have probably been somewhat devastating and
16 possibly to the detriment of the estates to have stopped the
17 sales and taken such legal actions, and we received, much to
18 their credit, the joint venture's sort of soft assurances that
19 this would all be worked out.

20 In addition, Your Honor, I guess there's some dumb
21 luck involved. We had a 90/10 split in this agreement which,
22 as long as the sales went well, to a large extent, the sharing
23 that we negotiated under this agreement would mitigate the
24 potential disaster. So it turned out that when we did our
25 analysis during this period of time, the only time this would

1 have been what I would have called a very, very dramatic,
2 although I can't say it's not dramatic what we have, but the
3 most dramatic had these sales not gone particularly well.

4 Fortunately, Your Honor, the sales did in fact
5 proceed very well. The liquidator's cadence was faster than
6 expected, the expenses were less than expenses, and so then we
7 came to an end point with a reconciliation. Your Honor, we
8 then evaluated, we had asked the liquidators for what would be
9 the price for which to resolve all of these matters and to not
10 go through what can be a time consuming and other expense of
11 all reconciliations with respect to shrinkage and the other
12 matters.

13 The liquidators proposed a number, and I'm really
14 speaking with respect to the fee, because the FF&E was a
15 straight calculation, a fee that would have reflected a number,
16 what I will say, on the chart of the cost factor. So the issue
17 -- one of the issues was whether they would go beyond that
18 chart and whether we would have a fight over whether that was a
19 maximum or minimum and all that.

20 They resolved that issue. In addition, they agreed
21 that, you know, we would not do the reconciliation with respect
22 to other amounts such as shrinkage, the loss property, and of
23 those amounts which could have been very detrimental to us. I
24 think it's fair to say, and we did some analysis and shared
25 that analysis with the Committee. The Committee has looked at

1 our analysis and tested our analysis and then did a memo based
2 upon our analysis.

3 I think it's fair to say, Your Honor, that if they
4 had pressed every issue, we could be tens of millions more in
5 terms of a fee. If we had pressed every issue, I think we
6 would have been less than \$10 million lower in the fee. As a
7 result of that analysis and the legal analysis that we had done
8 behind that, the debtors determined in their business judgment
9 to make a settlement on the number that's there.

10 Importantly, I think, Your Honor, to understand about
11 that, is although we can all do mathematical analysis and say
12 what this mistake could have cost us, it's not clear that the
13 mistake actually costs you anything, although other than the
14 fees, because had the right cost file been given, the bidding
15 would have been different, the amounts would have been
16 different. Had perfect information been out there, now partly
17 the reason you put a cost factor schedule is for mistakes, but
18 not of the sort where it's the wrong file, it's when discounts
19 and things of that had happened. So we really can't say for
20 sure what, you know, would have happened had the right cost
21 files done in this sale or the other sale.

22 But in the context of thinking about the issue, and
23 again, based upon, you know, various legal advice and analysis,
24 what we did was to look and say, what would have been, in basic
25 contract terms, the expectation value had the sales gone as

1 well as they did, what we believed the liquidators would have
2 obtained. And we think this number is right around what they
3 would have obtained with these successful sales and the
4 structure.

5 As Your Honor may recall, there was a guarantee of
6 three percent and then a one percent sharing. And we think
7 this number is actually right within that range of what an
8 expectation value is. I think we had, you know, I will say,
9 said firmly to the liquidators that had they gone beyond the
10 numbers to the numbers that they were doing it, it would have
11 been an unfair advantage as a result of a mistake. I think
12 they agreed with that. They've been very reasonable. And so,
13 Your Honor, we would ask Your Honor to approve the settlement
14 on those terms.

15 Again, Mr. Regan is in the courtroom today and can go
16 through the details about the costs and expense of the
17 reconciliation. Again, the liquidators are interested in
18 receiving the \$100 million return of the LC, which is why we
19 did this on expedited relief. I think no party is really
20 interested in reconciling, if at all possible, all of the
21 pluses and minuses on a hundred, on the account given this is a
22 quick settlement, I think it is in the best interest of the
23 estate.

24 And again, Your Honor, with respect to the amount,
25 again, I think that with respect to what Mr. Regan would

1 testify, to the extent that there is any damage from the
2 factor, clearly it is a fair and reasonable settlement, indeed
3 it may be at the lowest end of what we could have actually paid
4 to them, and I think the company has done well and I think the
5 Committee has analyzed it and agreed with that. And we would
6 ask Your Honor to approve the settlement and 9019, and to do
7 so, obviously, on an expedited basis, because much of this deal
8 is to return that letter of credit and put finality to this at
9 this point. I don't know if Your Honor has any questions.

10 THE COURT: Does any party wish to examine Mr. Regan
11 in connection with the proffered testimony?

12 (No audible response)

13 THE COURT: All right, that proffer will be accepted.
14 Does any party wish to be heard in connection with the motion
15 approving the letter agreement?

16 MS. BERAN: Good morning, Your Honor. For the
17 record, Paula Beran of the law firm of Tavenner and Beran as
18 co-counsel to the Official Committee of Unsecured Creditors.
19 And I believe with me today on the phone is Mr. Robert
20 Feinstein as co-counsel to the Committee.

21 The Committee has studied the underlying issue and
22 the resolution of the same, Your Honor. And although this is
23 more than just a typical reconciliation given what happened and
24 the resolution, the Committee does truly appreciate the
25 debtors' and the liquidators' efforts in resolving this. And

1 based on the proposed resolution to Your Honor and the
2 settlement that's before the Court, the Committee has no
3 objection to the same.

4 THE COURT: All right, thank you, Ms. Beran. Any
5 other party wish to be heard in connection with the motion?

6 (No audible response)

7 THE COURT: All right, Mr. Galardi, the Court has
8 reviewed the letter agreement, and as well as your motion, and
9 the Court will grant the motion to approve the agreement.

10 MR. GALARDI: Thank you, Your Honor. And just, we
11 have modified the order in one respect as of last night, Your
12 Honor, just to go through. There are certain third parties, we
13 are in fact giving a release pursuant to this from the debtors
14 are giving a release to the JV, the JV is giving a release to
15 the debtors.

16 Other than that expense element, which is highlighted
17 in the motion, there are potential third party claims. For
18 example, we've already been on notice that some landlord may
19 say we sold something that was not a fixture. We intend -- we
20 have now included language whereby with respect to third party
21 claims, the indemnity provisions are still in effect with
22 respect to the parties, and that's one change to the black line
23 order that we would like to have approved, Your Honor. That
24 was negotiated, we have given it to the Creditors' Committee.
25 I think Mr. Feinstein sent an e-mail this morning to confirm

1 that the revised form of order is acceptable to the Committee.
2 Again, the JV has consented to the language as have we, Your
3 Honor, so there will be one black line to the form of order.

4 THE COURT: All right, very good.

5 MR. GALARDI: And, Your Honor, then I would ask that
6 at least the New York and other counsel, Delaware counsel, be
7 excused today. It will save the estate some money and we can
8 go fly back to our respective --

9 THE COURT: Everyone that can save the estate some
10 money is now excused.

11 MR. GALARDI: Well, I'll take Mr. Foley as well with
12 me, Your Honor.

13 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

14 THE COURT: Thank you.

15 UNIDENTIFIED SPEAKER: Should we count it by the
16 hundreds? Thank you, Your Honor.

17 MR. FOLEY: Thank you, Your Honor. Just going back
18 to the balance of the agenda. The first ten items are matters
19 that we have resolved as of the hearing today. The first two
20 items are related. The first is motion for payment of an
21 administrative claim by AOL. The second one is by Platform A.
22 We have actually reconciled and paid and those movants have
23 asked that their motions be deemed withdrawn from the Court's
24 docket.

25 THE COURT: All right, they'll be deemed withdrawn.

1 MR. FOLEY: Your Honor, Item Number three is a motion
2 for relief from stay, a motion to compel payment, compel
3 rejection or assumption of executory contract by Lexar Media.
4 Counsel for Lexar is here today. We're pleased to report to
5 the Court that we have reached a resolution of this matter now
6 that the store closing sales are over, we'll be submitting an
7 order later today, Your Honor, that reconciles the amount of
8 the post-petition administrative claim to \$1,877,973.71 against
9 which a credit of \$625,000 will be applied for a net payment
10 due of \$1,252,973.71, which will be paid 11 days from entry of
11 Your Honor's order.

12 THE COURT: All right, very good.

13 MS. MORRISON: Good morning, Your Honor. I'll just
14 note my appearance. Valerie Morrison for Lexar Media.

15 THE COURT: All right, thank you.

16 MS. MORRISON: Thank you.

17 MR. FOLEY: Your Honor, just one additional item as
18 to that order. Because we've essentially resolved that the
19 contract will be rejected and these amounts will be paid as
20 administrative amounts due, the relief from stay portion of the
21 motion, as Your Honor recalls, will be deemed moot as part of
22 this order. So there will be no ruling with respect to that.

23 THE COURT: Very good.

24 MR. FOLEY: Your Honor, Item Number four, GMS Golden
25 Valley Ranch motion for payment of an administrative rent. We

1 have reconciled and resolved that amount and paid it so that
2 that item can be removed from the docket.

3 THE COURT: All right.

4 MR. FOLEY: Your Honor, Item Number five is the
5 motion by Applied Protective Technologies for payment of
6 administrative claims. We have resolved this one as well.
7 We're working on getting an endorsement to an order which we
8 will submit hopefully later today, Your Honor.

9 THE COURT: All right.

10 MR. FOLEY: Item Number six, this is a motion for
11 adequate protection for payment of administrative claim by Cole
12 Taunton (phonetic). Your Honor, this is a carryover from a
13 previous hearing. As Your Honor recalls, we've reconciled the
14 tax amounts due for the time period, so that matter can be
15 removed from the docket.

16 THE COURT: All right.

17 MR. FOLEY: Your Honor, Item Number seven is the --

18 THE COURT: Are we just removing that or are you
19 going to be submitting an order on that?

20 MR. FOLEY: Not, it's been paid, Your Honor, it can
21 be removed.

22 THE COURT: All right.

23 MR. FOLEY: Your Honor, Item Number seven is the
24 Dentisi (phonetic) Family partnership. And this had two
25 components to it. One related to taxes and one related to

1 attorneys' fees. The taxes that they have asserted due have
2 been reconciled and they either have been or will be paid -- I
3 don't believe counsel's here today -- but the attorney fee
4 request has been already withdrawn on the record without
5 prejudice to bring it up again at a future date. But there
6 won't be any further orders with respect to that one, Your
7 Honor. That can be removed from the docket.

8 THE COURT: All right.

9 MR. FOLEY: Your Honor, with respect to Item Number
10 eight and Number nine, these are Port Arthur Holdings III, LTD
11 in San Felipe, a motion and corrected motion with respect to
12 payment of administrative rent. These items have been resolved
13 and the amounts have been paid and they can be removed from the
14 docket.

15 Your Honor, Item Number ten is 610 in San Felipe,
16 again for rent under Section 365(d)(3), we have reconciled and
17 paid that amount. This motion can also be removed from the
18 docket.

19 That brings us to the items that we're seeking to
20 adjourn, Your Honor, to a future hearing. Number 11 is a
21 matter that we've carried for some time, this is our motion for
22 sell down procedures for trading and equity securities and
23 claims. We're still in discussions with the Creditors'
24 Committee as to the need for the relief set forth in this
25 motion, but we have agreed to adjourn this matter until the

1 April 28th omnibus hearing date.

2 THE COURT: All right, it will be adjourned until
3 April 28th?

4 MR. FOLEY: Your Honor, Item Number 12 on the docket
5 is, again, another old item that's been carried over for
6 several times now. This is our initial motion to reject
7 certain real estate leases. There were several objections
8 filed by some subtenants and some over-landlords relating to
9 those locations. We have resolved with Mr. Schwarzschild, who
10 is here today, items, the objections relating to Golf Galaxy,
11 which is Item Number B and Dollar Tree, which is Item Number C.
12 We have agreed that the effective date of rejection for those
13 subleases will be November 30th.

14 If Your Honor recalls, this was a situation where
15 rent was paid in advance by the subtenant. We filed on the
16 tenth, we did not pay the over-landlord. There are still
17 lingering claim issues, obviously, relating to the month of
18 November and potentially other claims that these subtenants may
19 want to raise. And this resolution is without prejudice to any
20 claims that they may want to raise in that regard as well as
21 our defenses with respect to those claims. But Items Number B
22 and C can be resolved.

23 Your Honor, Item Number A, which is Dick's Sporting
24 Goods, which is related to the Galleria landlord location and
25 Items Number D and E, which are the two over-landlord joinders

1 to their objection, we're asking that those matters be
2 adjourned to the April 14th hearing date, but we expect to
3 reach the exact same resolution, we just haven't gotten
4 confirmation from the over-landlords on that yet as of Friday
5 afternoon or this morning. But we hope that we'll have the
6 exact same resolution on the 14th with respect to the remaining
7 objections.

8 THE COURT: All right. And just to be clear, with
9 the Dick's Sporting Goods, you have the status on the agendas
10 had been resolved, really we're carrying that over to April 14
11 with the expectation that it will be resolved as of that date.

12 MR. FOLEY: Yes, Your Honor. I spoke to -- that was
13 a clarification that Mr. Schwarzschild and I reached this
14 morning.

15 THE COURT: All right, very good.

16 MR. FOLEY: Your Honor, Item Number 13 is the motion
17 by Navarre under 363 (e) for adequate protection. They have
18 asked and we have consented to adjourn that matter to the April
19 14th omnibus hearing date.

20 THE COURT: All right.

21 MR. FOLEY: Your Honor, Item Number 14 is a motion
22 for setoff and recoupment by TomTom. We are still trying to
23 reconcile the amounts alleged to be entitled to setoff.
24 There's a pretty large gap right now between the parties'
25 claims. We hope to get that matter resolved by the 14th, but

1 if not, I'm told by counsel for TomTom that they would like to
2 go forward on that date, so we'll be prepared to go forward on
3 that date if necessary.

4 THE COURT: All right, very good.

5 MR. FOLEY: Your Honor, Item Number 15 is the motion
6 by Federal Warranty Service Corp., and Assurant. Your Honor,
7 we are very close to a global settlement with respect to
8 Federal Warranty and Assurant that will result in quite a
9 substantial amount of funds coming to the estate. We hope to
10 have that documented by the April 14th omnibus hearing date, so
11 we would ask that that be adjourned until that date.

12 THE COURT: All right.

13 MR. FOLEY: Your Honor, Item Number 16, this is our
14 motion, as Your Honor's aware, to establish bid procedures and
15 disposition of the leases and dealing with the remaining cure
16 disputes that we've had earlier in this month. The items that
17 are listed as the objections, A, which is 444 Caan Avenue, B,
18 which is the Sports Authority stores, D, which is Gateway
19 Center Properties, E, which is Whitestone Development Partners,
20 and F which is Union Square Retail Trust, all of those parties
21 have asked that their cure disputes be adjourned until the
22 April 28th hearing date. We're working on -- we believe we
23 resolved all but two and we're working on the form of escrow
24 agreements with respect to the disputed cure amount.

25 As Your Honor is aware, we set up a procedure where

1 we've paid the undisputed cure amount, we agreed to escrow the
2 disputed cure amount. Some of the parties were okay with us
3 having it simply segregated in our own account, others wanted
4 escrow agreements, so we're working through that. But we're
5 also trying to reconcile the disputed amounts and we hope to
6 have those resolved by the April 28th hearing date.

7 The one item, Sea Properties, which is Item Number C,
8 they've asked that their matter only be adjourned until the
9 April 14th hearing date.

10 THE COURT: All right.

11 MR. FOLEY: Your Honor, Item Number 17 is a motion
12 from relief from stay by Directv. Again, I think we reported
13 to the Court before that this may work itself out such that the
14 503(b)(9) amount is burned off and we should know more by the
15 April 14th hearing date. So they've asked and we've agreed
16 that that matter be adjourned until that day.

17 THE COURT: All right. Very good.

18 MR. FOLEY: Your Honor, Item Number 18, which is the
19 motion by Sony Pictures for administrative expense claim.
20 Again, this involves a reconciliation of various claims, and it
21 may turn out that the estate is actually owed money as a result
22 of this, and everybody will agree to it. So we're still
23 working through that, but they've asked that we adjourn the
24 matter until the April 14th hearing date with the hopes that it
25 be resolved by that date.

1 THE COURT: All right.

2 MR. FOLEY: Your Honor, Item Number 19 is the motion
3 by AT&T. We have actually reached an agreement with them and
4 we're working on consent orders that address the payment of the
5 amounts due post-petition and the rejection dates with respect
6 to those contracts. We're simply waiting for endorsements on
7 those orders and we'll hopefully have those submitted before
8 the April 14th hearing date. But until then, we'd ask the
9 Court to adjourn it until that date.

10 THE COURT: All right.

11 MR. FOLEY: Your Honor, I'm going to take a couple
12 items here out of order, only because they're related to one
13 store location that was under construction at the time that we
14 filed. These are Items Number 20, Cleveland construction
15 motion for relief from stay, Item Number 28 which is John Boor
16 (phonetic) Contracting, motion for relief from stay, Item
17 Number 29, which is Hillson Electric (phonetic), motion for
18 relief from stay, Item Number 30, which is Lang Construction's
19 motion for relief from stay. And I believe those are the ones
20 relating to this one location. They are essentially mechanics'
21 liens types request for relief. We're working on forms of
22 order very similar to the ESI order that Your Honor's already
23 entered, and we expect to have those orders submitted to your
24 chambers before the April 14th hearing date, but until then we
25 would ask Items Number 20, 28, 29 and 30 be adjourned until the

1 April 14th hearing date.

2 THE COURT: That will be fine, Mr. Foley.

3 MR. FOLEY: Thank you, Your Honor. Items Number 21,
4 22, 23, 24, 25, 26 and 27 are all motions described to us by
5 the respective landlord, landlord's counsel as prophylactic in
6 nature to preserve their rights. They are Goodmill, LLC,
7 Goldenberg Management on behalf of Red Rose Commons, Brett
8 Services on behalf of PR Christiana LLC, Brett Services on
9 behalf of PRGL Paxton, LP, Goldenberg Management on behalf of
10 Boulevard North Associates, and Parkside Realty and Marple XYZ
11 Associates. All of those landlords and landlords' counsel have
12 requested, now that we have May hearing dates from the Court,
13 to adjourn all of their motions until the May 28th hearing
14 date, Your Honor.

15 THE COURT: Okay, as opposed to the April 28 hearing
16 date.

17 MR. FOLEY: Yes, Your Honor.

18 THE COURT: That will be fine.

19 MR. FOLEY: Your Honor, that brings us to Item Number
20 31 on the docket, which is Prosite Business Solutions' motion
21 for an administrative claim. We are very close to reconciling
22 the correct amount to pay here and they've requested and we've
23 agreed to adjourn the matter to the April 14th hearing date.

24 THE COURT: Okay, that will be fine.

25 MR. FOLEY: Your Honor, Ms. Boehm will address Items

1 Number 32 and 35 on the docket which relate to our claimant
2 objection process.

3 THE COURT: All right, thank you.

4 MS. BOEHM: Good morning, Your Honor. Sarah Boehm
5 from McGuireWoods on behalf of the debtors. Number 32 on the
6 agenda is the debtors' first omnibus objection to certain
7 duplicative 503(b)(9) claims and certain amended 503(b)(9)
8 claims. This objection was filed on February the 13th at
9 Docket Number 2171. We began a review of the claims with our
10 initial focus on the 503(b)(9) claims and had filed the first
11 omnibus objection to try to knock out some of the amended and
12 duplicative claims. This objection included 22 duplicative
13 claims for a total of 9.9 million and nine amended claims for a
14 total of over 125 million. We did not receive any responses
15 docketed with the Clerk's Office, but we did receive one
16 informal response that we will submit a separate order on that
17 just clarifies which claim is surviving versus which claim is
18 being disallowed.

19 And with that, Your Honor, we would ask that the
20 claims that were identified on the exhibits be disallowed with
21 the surviving claims also identified on the exhibits being the
22 ones that remain.

23 THE COURT: All right. Does any party wish to be
24 heard in connection with the debtors' first omnibus objection
25 to duplicative claims and certain amended claims?

1 (No audible response)

2 THE COURT: All right, that motion will be granted.

3 MS. BOEHM: Thank you, Your Honor. Skipping ahead to
4 Number 35 on the agenda is the debtors' motion for an order
5 approving procedures for filing future omnibus objections and
6 approving the form of matter of notice of the omnibus
7 objections. This was filed on March 10th at Docket Number
8 2505. As of the date that we filed that motion, there were
9 over 11,500 claims filed with the claims and noticing agent. I
10 believe as of yesterday, there was well over 12,000 approaching
11 13,000. So we wanted to go ahead and get these procedures put
12 in place so that we could streamline the claim objection
13 process as well as make it as most cost effective as possible.
14 But also at the same time keeping in mind the new rule 3007 and
15 the purpose to protect the creditors' due process rights as
16 well as provide transparency to the process.

17 In doing this, we model these off of the procedures
18 that were followed and approved in the Movie Gallery with a
19 customized notice being prepared by the claims' agent that will
20 identify the exhibit and the claim and the name, et cetera, as
21 well as a notice that will be identifying the response date,
22 what they need to include in the response and all the relevant
23 material.

24 We did not receive any objections to the motion
25 docketed with the Clerk's Office, but we did receive one

1 informal response from counsel for some landlords and we have
2 revised the procedures with respect to some of his comments. I
3 have a black line that I can hand up. But basically the main
4 thing that we revised had to do with the content of the
5 response. We weren't trying to set it up as a trap for people
6 to fall into that if they didn't include certain things in the
7 response that, you know, that we would somehow ding them, so we
8 just modified the language slightly to make it that they had to
9 substantially comply with these procedures and try to include
10 as much information as possible, et cetera.

11 The other changes that we made with respect to the
12 procedure that was set forth in Movie Gallery was we clarified
13 two things. One is that we could object on grounds that were
14 not specifically identified in Rule 3007, which I think they
15 did in Movie Gallery, it just didn't say it, so we wanted to
16 point that out. And the other thing is with respect to the
17 hearings. We set it so that if you file a response, the next
18 omnibus hearing would be a status hearing and you don't have to
19 attend. Basically we're just trying to not clog the docket
20 with claim objection responses when we will work to resolve and
21 if we get to a point where we can't, then we'll set it for a
22 special evidentiary hearing. So we just tried to streamline
23 that process as well and keep the costs down from counsel
24 having to constantly attend hearings to just say it's been
25 continued further. So those were the two main differences with

1 those as well.

2 THE COURT: All right, very good. Does any party
3 wish to be heard in connection with the debtors' motion for an
4 order approving procedures for filing omnibus objections to
5 claims? Mr. Epps?

6 MR. EPPS: Good morning, Your Honor. A. C. Epps,
7 Jr., on behalf of a group of landlords. We are in fact the
8 group that Ms. Boehm identified. When we saw their opposed
9 procedures rather than first file an objection, we first
10 contacted counsel to see if we couldn't work out something.
11 Our particular worry was, as Ms. Boehm said, that we were
12 worried about what I would call a "gotcha," if you didn't do
13 this or you didn't do that, you were automatically out on a
14 non-substantive ground. I think that we have approached it
15 perfectly fairly. I must say that counsel was wonderful in
16 dealing with us on this and we are completely content with what
17 we have and I'm pleased it happened that way and I would join
18 in a request that it be approved as modified. Thank you very
19 much.

20 THE COURT: All right, thank you. Any other party
21 wish to be heard in connection with the motion?

22 (No audible response)

23 THE COURT: All right, Ms. Boehm, the Court will
24 grant the debtors' motion.

25 MS. BOEHM: Thank you. I'll just hand up this black

1 line so that you can have a copy to review. Thank you.

2 THE COURT: Thank you.

3 MR. FOLEY: Thank you, Your Honor. Item Number 33 on
4 the agenda is our motion to reject additional equipment that we
5 lease from IBM at our store locations. As Your Honor is aware,
6 many more store locations closed this month and we have been
7 trying to be prudent and expeditious as how we reject the
8 supplements to the master lease agreements with IBM to save the
9 estate administrative rent with respect to this equipment. The
10 locations to which the equipment pertains is listed on Exhibit
11 A to our motion and the various supplements to the master lease
12 agreement are set forth on Exhibit B to the motion, and we have
13 not received any objections to the relief sought on Item Number
14 33, I would ask the Court to grant the rejection motion.

15 THE COURT: Does any party wish to be heard in
16 connection with the debtors' motion to reject certain unexpired
17 leases of personal property?

18 (No audible response)

19 THE COURT: All right, that will be granted.

20 MR. FOLEY: Thank you, Your Honor. With respect to
21 Item Number 34, this is our fifth omnibus motion to reject
22 certain real estate lease locations. Your Honor, we've been
23 able to resolve the response and objection filed by the
24 Sporting Authority. Your Honor, the resolution of that, just
25 to give the Court some background, the Sports Authority is a

1 subtenant with respect to one particular location. They paid
2 full month's rent for March. We obviously rejecting it in the
3 middle of the month -- toward the beginning of the month.
4 We've agreed with them to repay to them by wire transfer by
5 April 3rd, 21 days rent prorated for the month of March. They,
6 just as a protective measure, wanted to have their pending
7 objection carried over to the 14th for the sole purpose of
8 being able at that point to argue if we haven't paid back the
9 money yet. We've agreed with respect to that, that we have no
10 problem with that, but otherwise, they are fine with that
11 resolution, Your Honor. So the relief otherwise can be granted
12 in that motion.

13 THE COURT: Does any party wish to be heard in
14 connection with this motion to authorize rejection?

15 MR. GOLDMAN: Yes, Your Honor. Neil Goldman for TSA
16 Stores, Your Honor. There's one other element to this. There
17 is an order that was worked on over the weekend. There's a
18 dispute between the owner of the property and our client as to
19 whether or not our client's --

20 THE COURT: Who's your client, sir?

21 MR. GOLDMAN: TSA Stores, Sports Authority. As to
22 whether or not they're there pursuant to a sublease or a prime
23 lease with the owner, and that issue is being reserved and I
24 believe with the order being submitted incorporates that
25 reservation.

1 THE COURT: All right, very good.

2 MR. FOLEY: That's correct, Your Honor. Other than
3 establishing the bar date for any rejection damages should that
4 issue come out some other way, any other issues are being
5 reserved, Your Honor.

6 THE COURT: All right, very good. Just so I'm clear,
7 we are then carrying this over to the 14th of April or are you
8 going to be submitting a consent order?

9 MR. FOLEY: Well, we will be submitting a consent
10 order that approves the rejection that we've sought.

11 THE COURT: But TSA wants to make sure that it stays
12 on the docket in the unlikely event that you default and don't
13 actually pay them what you said you were going to pay them in
14 this order?

15 MR. FOLEY: That's correct, Your Honor.

16 THE COURT: All right.

17 MR. FOLEY: So if we could just continue it on the
18 docket until then, as soon as that payment is confirmed we will
19 remove it from the next agenda that we file.

20 THE COURT: Very good.

21 MR. FOLEY: Your Honor, that brings us to Item Number
22 36, I believe, on the agenda, which is our sixth motion to
23 reject certain real estate leases. Your Honor, this motion
24 only covers four locations which are set forth on Exhibit A to
25 the motion. Store Locations Number 344, 379, 755 and 775,

1 which are the Livermoor Distribution Center, the Walnut
2 Distribution Center, the Merrian Distribution Center, and the
3 Orlando Distribution Center. Your Honor, we have not received
4 any responses to the sixth motion to reject these leases and we
5 would ask the Court to grant the relief requested.

6 THE COURT: Any party wish to be heard in connection
7 with this motion?

8 (No audible response)

9 THE COURT: All right, the motion is granted.

10 MR. FOLEY: Thank you, Your Honor. Item Number 37 is
11 our third motion to reject certain executory contracts, which
12 again, are set forth on Exhibit A to the motion. Your Honor,
13 again, this is essentially as a result of the store closing
14 sales finishing through the month of March. We have not
15 received any responses to our request to reject these
16 contracts. We would ask the Court to grant the relief
17 requested in the motion.

18 THE COURT: Any party wish to be heard in connection
19 with the debtors' motion to authorize rejection of certain
20 executory contracts at Item Number 37?

21 (No audible response)

22 THE COURT: All right, that motion will be granted.

23 MR. FOLEY: Your Honor, I believe that brings us to
24 the last item on the agenda, which is Item Number 41. This is
25 a motion that we filed to modify with respect to certain

1 leases. The procedures that the Court previously approved that
2 would have otherwise automatically resulted in a rejection as
3 of tomorrow. As Your Honor recalls, the last round of store
4 closing sales involved some 567 locations and many of those
5 locations, hundreds of those locations have already been, those
6 locations have been rejected, several more have been
7 essentially sold back to the landlords, others have been sold
8 to third parties that Your Honor has already approved. In
9 going through the remaining leases prior to this deadline of
10 March 31, the debtors and the debtors' professionals and their,
11 and DJM Asset Management, which is their real estate
12 consultants, identified several locations that we have
13 concluded from a cost benefit analysis, it makes sense to
14 continue to try to market these locations. They are listed on
15 the exhibit to the motion. They are Store Number 232, which is
16 the San Mateo Superstore. The landlord there is CarmCar
17 (phonetic) Enterprises, Inc. The next one is Store Number 567,
18 which is Ardmore Distribution Center. The landlord there is
19 Ardmore Development Authority. The next one is Store Number
20 805, which is the Chesterfield Superstore. The landlord there
21 is Sea Properties I, LLC. Store Number 3125, Bloomingdale
22 Superstore, which is Assignment Property Group II, LP. Store
23 Number 3140, St. Cloud Superstore, which is St. Cloud
24 Associates is the landlord. 3364, which is Fullerton
25 Superstore, Orange Fair Marketplace, LLC is the landlord.

1 And then we have four subleases, Your Honor, that are
2 related to these previous locations. One is, again, with San
3 Mateo, we've identified that -- we identify that internally as
4 6116 sublease. TJ Maxx is a subtenant there who has filed an
5 objection that Your Honor will hear shortly. The St. Cloud
6 Superstore, which is sublease Number 6410 with TBI Inc., doing
7 business as Savers. And then Sublease Number 6411, also at the
8 St. Cloud Superstore, this is Consolidated Stores Corporation
9 doing business as Big Lots. And then 6484 Sublease, which is
10 at the Bloomingdale Superstore with Dollar Tree Stores as a
11 subtenant. And then finally, Your Honor, Store Number 91 --
12 it's not a store, it's the headquarters building, 9103, Circuit
13 City corporate headquarters, which was also referred to as DR3.
14 There's a ground lease there that we're looking at preserving
15 value with respect to, and that's Inland Western Richmond
16 Mainland, LLC. This motion is only seeking relief to modify
17 the procedures as to these locations so that they are not
18 automatically deemed rejected as of tomorrow.

19 So we'll be seeking to ask the Court to enter an
20 order today to approve that so that those lease locations are
21 not rejected. Otherwise, Your Honor, we're not seeking to
22 change the procedures. If these locations are not otherwise
23 assumed or rejected prior to the 210-day period provided in the
24 bankruptcy code, they will be deemed rejected as of that date.
25 Again, we will provide seven days notice of any rejection to

1 the effected parties, and the effective parties have the right
2 to respond to that notice and raise whatever issues they would
3 like to raise, and otherwise, Your Honor, we think that
4 nobody's substantive rights are being prejudiced here. The
5 estate, again, has made the calculation that from a cost
6 benefit analysis with the subtenants paying subrent, in one
7 case, more than we pay on the overlease, that there's minimal
8 cost to the estate to preserving the optionality of hopefully
9 trying to find some value here with respect to these leases.

10 THE COURT: All right. Very good. Does any party
11 wish to be heard in connection with the debtor's motion?

12 MS. HUDSON: Yes, Your Honor. May it please the
13 Court. Lisa Hudson on behalf of one of those subtenants, TJ
14 Maxx of California, LLC. To the extent that the relief today
15 is solely not to have that automatic rejection tomorrow, we
16 recognize that we are probably one of these profitable
17 anomalies and that it is in our best interest, but we also
18 filed a prophylactic type objection and demand for adequate
19 assurance, because we hold a 25,000 square foot sublease, and
20 things such as seven days notice when you have an operational
21 store with deliveries and staff and that sort of thing would
22 not really be doable. We would need far more time to vacate a
23 store, find a new store, that sort of thing. And we were also
24 a qualified bidder and a deposit is being held, and it's
25 ambiguous in the procedures to us what happens with the

1 withdrawn property from the auction. So I think we can agree
2 to allow the relief being sought in the limited representation
3 today and perhaps carve out this sublease and submit some sort
4 of agreed order just resolving what we have. We just seek
5 simply to protect our possessory interest as a subtenant and
6 not have any substantive impairment. And I'm hearing Mr. Foley
7 say that that's not being sought today. We just simply didn't
8 have the time to resolve that prior to today's hearing.

9 THE COURT: What is the issue with the deposit? You
10 said that they're holding a deposit of yours on a --

11 MS. HUDSON: It's our understanding they have 45 days
12 after the end of the auction to return the deposit, but when
13 you have been withdrawn from the auction and there may be a
14 substantive auction or auctions after auctions, at what point,
15 we just want specificity, when would that deposit be returned?
16 I think we're an anomaly from the way the procedures are set
17 forth simply because our lease has been withdrawn and is being
18 separately marketed.

19 THE COURT: Okay. And so if I understand, you have
20 that issue, and then the other issue is that you want more than
21 seven days notice?

22 MS. HUDSON: The other issue is under 363(105) and
23 365, they're going to seek to sell free and clear, we want our
24 subtenant interest to be protected and not substantively
25 impaired. If they're going to seek to assign it, we also want

1 the right to elect, but that's premature today, they haven't
2 even identified an assignee. If they seek to reject it, then
3 yes, Your Honor, we seek more than seven days simply because
4 we're an operational store of a huge capacity, and seven days
5 is just not business industry standard for us. We were trying
6 to go back and forth on a number of days, but I still need to
7 hear from my client what's realistic and what's reasonable.
8 Seven days is not, and the number of days that we were trying
9 to negotiate prior to today's hearing is not there yet either.

10 But given the representations today, I do believe
11 that we could come to some sort of agreement on a carve out,
12 maybe even by an e-mail such that we understand that the relief
13 being tendered in the order today is not the impairments that
14 we feared.

15 THE COURT: Well, I mean, as I understand it, if the
16 debtor decides to reject, all they're going to do is give seven
17 days notice to your client, to you, and then you've got that
18 seven days, you can come in and you can raise whatever
19 objections regarding the reasonableness of that notice,
20 regarding whether all these different operational issues that
21 you're raising, wouldn't that be the context to raise that as
22 opposed to raising it now, because now it's sort of
23 speculative, we don't even know if this lease is going to be
24 rejected, and in fact, I would suspect that if I asked Mr.
25 Foley, he'd say he hoped it wouldn't be, because he perceives

1 that there's some value there.

2 MS. HUDSON: Our hope too. Prophylactic, Your Honor,
3 belts and suspenders, and in all candor, these things were done
4 because -- to address ambiguities and in the abundance of
5 caution. And the dialogue has started and we do believe that
6 it can be reserved. So you're correct that at this point it's
7 probably premature.

8 THE COURT: All right, very good.

9 MS. HUDSON: We just want to reserve those rights.

10 THE COURT: All right. Thank you. Mr. Foley, is the
11 Court correct on seven days that you just give that notice and
12 at that point we can raise these issues if they come up if they
13 are issues at that point?

14 MR. FOLEY: Your Honor's exactly right. Again, this
15 is the one location where the subtenant is paying us more than
16 we're paying the over-landlord. So I would hope that we would
17 find a home for this, with this lease and there won't be a
18 rejection. But if there is a rejection, and again, this part
19 of the procedures is not changing, there was no objection to
20 the seven-day rejection notice before. We haven't sought to
21 change that. Again, the only thing we're changing here is the
22 automatic rejection that happens tomorrow if Your Honor doesn't
23 enter this order to preserve the optionality of preserving some
24 more value, getting some more value out of these leases. With
25 respect to --

1 THE COURT: What about the issue about the deposit?

2 MR. FOLEY: The deposit, Your Honor, I don't believe
3 there's anything in the procedures that we're changing with
4 respect to the deposits to the extent that they made a bid and
5 they made a deposit and it was withdrawn from the auction. The
6 auction was in the middle of the March and there's a 45-day
7 period, it will be returned.

8 THE COURT: Within the 45-day period.

9 MR. FOLEY: Within the 45-day period.

10 THE COURT: That's not changing as a result of this.

11 MR. FOLEY: That's not changing either, Your Honor.

12 THE COURT: All right, very good. Anything further?

13 (No audible response)

14 THE COURT: All right, the Court's going to grant the
15 motion, and that's without prejudice to TJ Maxx being able to
16 come in at some later date if it doesn't think that seven days
17 is appropriate or if at the end of the 45-day period originally
18 approved you haven't received your deposit back, obviously none
19 of your rights are impaired. At any point you can come in and
20 ask for relief at that point in time. But I think that at this
21 point the only thing that I'm modifying is that this lease
22 isn't going to be automatically rejected tomorrow and then that
23 time frame is going to go out to the full extent of the 210
24 days that the debtor otherwise had.

25 MS. HUDSON: Thank you, Your Honor.

1 THE COURT: Any question on the Court's ruling?

2 MR. FOLEY: Thank you, Your Honor. And this
3 particular order and as well as the order approving the Great
4 American Joint Venture settlement, we will try to get to Your
5 Honor as soon as possible for entry today.

6 THE COURT: Okay, thank you.

7 MR. FOLEY: But that concludes the items on the
8 agenda for today, Your Honor.

9 THE COURT: All right, thank you.

10 * * * * *

11 C E R T I F I C A T I O N

12 I, RITA BERGEN, court approved transcriber, certify
13 that the foregoing is a correct transcript from the official
14 electronic sound recording of the proceedings in the above-
15 entitled matter, and to the best of my ability.

16

17 /s/ Rita Bergen DATE: April 5, 2009

18 RITA BERGEN

19 J&J COURT TRANSCRIBERS, INC.

20

21

22

23

24

25

J&J COURT TRANSCRIBERS, INC.